(2025) 05 DRAT CK 0997

In the Debts Recovery Appellate Tribunal, Allahabad

Case No : Appeal Dy. No. 378 Of 2020

M/s Anjali Traders And Anr — APPELLANT

Vs

Union Bank Of India And 2 Ors — RESPONDENT

Date of Decision : 15-05-2025

Acts Referred:

Securitisation And Reconstruction Of Financial Assests And Enforcement Of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 17, 18

Citation : (2025) 05 DRAT CK 0997

Hon'ble Judges : R. D. Khare, Chairperson

Bench : Single Bench

Advocate : Ram Charan Yadav, Sandeep Arora, Rakesh Mishra

Final Decision : Disposed Of

Judgement

R. D. Khare, Chairperson

1. The present appeal has been filed under Section 18 of the Securitization and Reconstruction of Financial Assets and Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002) against the order dated 22.04.2017, by which the S. A. No. 178/2017 has been dismissed on the ground of delay.

2. The brief facts of the matter are that the appellant no. 1 is a proprietorship firm, which was sanctioned a cash credit limit by the respondent-Bank through its proprietor appellant no. 2, in order to secure the same, the appellant created an equitable mortgage over which property by depositing title deed with the respondent-Bank. Since the appellant-borrower did not adhere to the terms of the loan agreement, therefore, the account was classified as NPA and a demand notice dated 04.04.2016 was issued under Section 13(2) of the SARFAESI Act for a sum of Rs. 15.30 lacs along with interest as on 31.03.2016. As the appellant-borrower did not pay any heed to the said demand, the respondent-Bank has issued the possession notice dated 17.06.2016 under Section 13(4) of the said Act and taken the symbolic possession of the property in question. Thereafter, an

application was filed before the District Magistrate under Section 14 of the SARFAESI Act on 15.07.2016, which was allowed on 19.07.2016 and the physical possession was taken on 06.08.2016.

3. It appears that the appellant-borrower challenged the possession notice by filing S.A. No. 315 of 2016 before the Tribunal below which was dismissed in default vide order dated 30.09.2016. Against it, a restoration application being I.A. No. 207 of 2016 was filed by the borrower for restoring the said S.A. before the Tribunal below, in which notices were issued. During the pendency of the restoration application, the respondent-Bank issued sale notice dated 12.11.2016 scheduling the auction of the property in question on 16.12.2016 for a sum of Rs. 25.62 lacs, the property was sold and the sale certificate was issued and sale deed was executed in favour of the respondent No.3-auction purchaser on 07.02.2017. Thereafter, the respondent-Bank written a letter dated 06.03.2017 to the appellant for removing the articles lying in the premises in question. Thereafter, the borrower challenged the auction sale notice by filing the S.A. No. 178/2017 along with application for condonation of delay, which has been rejected vide order impugned and consequently the S.A. also. Being aggrieved by the said order, the present appeal has been filed.

4. Learned counsel for the appellant submitted that in spite of depositing entire amount as mentioned in the demand notice dated 04.04.2016, the order impugned has been passed rejecting the delay condonation application on the ground that the delay has not been properly explained. The learned counsel further submitted that no sale notice was ever served upon the appellant, as he came to know about the same, only when he received a letter dated 06.03.2017 from the respondent-Bank on 23.03.2017 for removal of articles lying in the premises in question and thereafter the present appeal was filed on 31.03.2017. The learned counsel has referred to the order dated 26.11.2020 passed by the Hon’ble High Court in Writ-C No. 20226 of 2017, which is placed as Annexure 13 at page no. 85 of the paper book. It was, therefore, prayed that the order impugned may be set aside and the appeal may be allowed by remanding the case before the Tribunal below for deciding it on merits.

5. The learned counsel for the respondent-Bank submitted that the amount was deposited after issuance of demand notice under section 13(2) and possession notice under section 13(4) of the SARFAESI Act, 2002. It was contended that the aforesaid writ petition was filed after issuance of sale notice and registration thereof, in which the appellant had stated that he wants to deposit entire amount and the Hon’ble High Court has disposed off the said writ petition directing the appellant to deposit the amount and thereafter the amount in question was deposited. It was also contended that the appellant had filed two applications under section 17 of the SARFAESI Act, one being no. 315/16, which was dismissed on 30.09.2016 for non prosecution, in which the action of the Bank up till possession notice was assailed and in the second application under section 17, the auction sale notice was assailed. It was further contended that against

the aforesaid order dated 30.09.2016 dismissing the application under section 17, the applicant filed a restoration application no. 207 of 2016, which was entertained on 02.12.2016, but prior to it, the Bank put the secured assets for auction on 16.12.2016 pursuant to the auction-sale notice dated 12.11.2016. It was further contended that expedite application/stay application was filed for expediting the hearing of restoration application of S.A. No. 315 of 2016, which was dismissed on 30.09.2016, but the same was never challenged by the applicants. It was, therefore, contended that the said order became final. Thereafter, the property was auctioned and sale certificate was issued, which was registered and the household goods were kept in the premises in question and in that regard, a letter was sent to the appellant for removing the same and it is only after completion of entire process, but the second securitization application under section 17 was filed, which was rightly dismissed on the ground of limitation observing the latches on part of the appellant. It was further contended that it is the case of gross negligence and they had abandoned the proceedings of the SARFAESI Act, which was challenged only after issuance of letter for removing the household goods from the premises in question by filing the second S.A. Learned counsel also submitted that the restoration application no. 207/2016 was also dismissed for non prosecution, which is apparent from the order dated 24.08.2020 of this Appellate Tribunal. The copy of the said order is filed as Annexure no. 2 at page 16 of the objection/reply filed by the respondent-Bank. It was, therefore, prayed that the appeal may be dismissed with heavy costs.

6. Learned counsel for the respondent-auction purchaser submitted that the auction purchaser has deposited the entire sale consideration with the respondent-Bank in accordance with the Rules and the sale was confirmed and sale certificate was issued on 23.01.2017, which was registered by executing sale deed on 07.02.2017 in his favour and the property has also been mutated in his name in revenue records. It was thus contended that the auction purchaser has now become an absolute owner of the property in question, therefore, the sale at this state cannot be disturbed, hence the appeal filed by the appellant may be dismissed with heavy costs.

7. Heard the learned counsels for the parties and considered the material available on record.

8. The sole question involved in the present case is, as to whether the S.A. filed by the appellant has rightly been dismissed by the Tribunal below on the ground of delay or not?

9. It is to be seen that the borrower had filed one S.A. being No. 315/2016 challenging the demand notice and possession notice issued by the respondent-Bank, which was dismissed in default by the Tribunal below vide order dated 30.09.2016. Against it, the appellant filed a restoration application, which was registered as M.A. No.207/2016, in which notices were issued to the opposite parties, but ultimately the same was also dismissed for want of prosecution by

the Tribunal below vide order dated 24.08.2022, which is stated to have not been challenged anywhere, thus the proceedings upto the stage of possession notice have attained finality.

10. In order to decide the limitation point involved in the S.A. before the Tribunal below, the auction proceedings are required to be scrutinized. The sale notice was issued on 12.11.2016 and the auction sale of the property in question was fixed for 16.12.2016 and the same was challenged by the appellant before the Tribunal below by filing the present S.A. on 31.03.2017 along with application for condonation of delay. The contention of the appellant is that no sale notice was ever served upon the appellant, as he came to know about the same, only when he received a letter dated 06.03.2017 from the respondent-Bank on 23.03.2017 for removal of articles lying in the premises in question and thereafter the present appeal was filed on 31.03.2017. In response to it, the respondent-Bank in para 13 of its reply has only stated that the said contention of the appellant is false and frivolous as the appellant herein has admitted the service of all the statutory notices, but no documents regarding proof of dispatch/delivery upon the appellants or any affixation has been filed by the Bank, which may authenticate the date of service/knowledge of the auction proceedings to the appellant, therefore, it is held that the relevant date of knowledge of the appellant about the auction proceedings is 23.03.2017, because the respondent-Bank has not whispered even a single word nor filed any document as to when the auction sale notice was served upon the appellant or published in the newspapers. If the limitation is counted from 23.03.2017, the S.A. filed by the appellant is well within the limitation, as the same was filed on 31.03.2017. Thus, the S.A. filed by the appellant is held to have been filed within limitation.

11. In view of the above, the order impugned is set aside and the appeal is allowed and the matter is remanded back to the Tribunal below for considering and deciding it on merits in accordance with law after affording proper opportunity of hearing to the parties concerned. No order as to costs.

12. A copy of this judgment be forwarded to the parties as well as to the DRT concerned and be also uploaded on e-DRT portal.